

Title 31
ELECTIONS
Part III. Procurement

Chapter 1. Procurement of Voting Machine Drayage

Subchapter A. General Provisions

§101. Authority and Duties of the Commissioner of Elections

A. The Commissioner of Elections shall have the authority and responsibility to promulgate rules and regulations governing the procurement, management, and control of all voting machines drayage required and set forth in R.S. 18:1371.

B. The chief procurement officer of the Department of Elections and Registration shall be the Commissioner of Elections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 24:1922 (October 1998).

§103. Delegation of Authority

A. The Commissioner of Elections may delegate in writing certain responsibilities set forth herein, however, he shall review any action taken by his designee.

AUTHORITY NOTE: Promulgated in accordance with Article IV Section 12 of the Constitution, R.S. 18:21, R.S. 18:1371, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:595 (June 1991).

§105. Delegation of Signature Authority

A. The Commissioner of Elections or his designee shall sign all contracts for drayage of voting machines.

B. This delegation of signature authority must be in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 24:1922 (October 1998).

§107. Definition

Drayage - the transporting or cartage of voting equipment as directed by the commissioner of elections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 24:1922 (October 1998).

§109. Revised Statutes

A. These regulations shall be read and interpreted jointly with R.S. 36:1551 et seq.

B. A rule or regulation shall not change any explicit contract provision, commitment, right or obligation of the state, or of a contractor under a state contract in existence on the effective date of that rule or regulation. However, to the extent possible, existing contracts shall be constructed in conformity with these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with Article IV Section 12 of the Constitution, R.S. 18:21, R.S. 18:1371, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:595 (June 1991).

Subchapter B. Competitive Sealed Bidding

§111. Invitation for Bids, Public Notice, and Bid Opening

A. All contracts for the drayage of voting machines shall be awarded by competitive sealed bidding on a parish or regional basis. If the Commissioner of Elections determines a bid will be awarded on a regional basis, the criteria shall include but not necessarily be limited to:

1. not more than four parishes in a region;
2. not more than 1,000 voting machines in a region;
3. uniform beginning delivery time with continuous drayage for each parish in a region;
4. uniform beginning return time with continuous drayage for each parish in a region;
5. input will be solicited from each clerk of court affected to be included in a regional bid; and
6. a cost savings when bid on a regional basis.

B. Competitive sealed bidding shall be accomplished by sending out written notices to persons known to be able to provide the department's requirements, and by advertising in accordance with R.S. 18:1371 at least 30 days prior to bid opening.

1. Written notices shall be mailed to those persons who have previously requested an invitation for bids for said parish or parishes, if regional, within the previous four years. The written notices shall be mailed to any parish governing authority included in the bid to be let.

2. The written notices and advertisements shall announce:
 - a. the type of contract;

- b. the parish or region for which the contract is required;
- c. the method of acquiring an invitation for bids; and
- d. the date, time, and place of bid opening.

3. Advertisements shall be published in the state official journal and in the official journal of the parish or parishes, if regional, for which the contract is required. Advertisements shall be published in a newspaper of general circulation printed in such parish or parishes, if regional, or, if there is no newspaper printed in such parish or parishes, if regional, in a newspaper printed in the nearest parish that has a general circulation in the parish or parishes, if regional, covered by the contract.

4. A notice shall be sent to the parish governing authority and the clerk of court of the parish or parishes, if regional, for which the contract is required. The clerk of court shall prominently post such notice in his office.

C. The invitation for bids shall contain:

- 1. complete description of the transportation required;
- 2. all applicable terms, conditions, and other requirements;
- 3. types and limits of insurance required;
- 4. bid and performance bonding requirements; and
- 5. factors which will be used to determine responsibility of bidders.

D. Bids shall be publicly opened and read as specified in the invitation for bids in the presence of one or more witnesses. Bidders and the public may be present at any bid opening.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371 and R.S. 39:1594.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:595 (June 1991), amended LR 19:175 (February 1993), LR 24:1923 (October 1998).

§113. Bid Evaluation

A. Bids shall be evaluated based on adherence to the specifications, terms, and conditions listed in the invitation for bids. The vendor must list any deviations from these specifications, terms, or conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:1594(E) and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:596 (June 1991).

§115. Responsibility of Bidders

A. The Commissioner of Elections or his designee may make reasonable inquiries to determine the responsibility of prospective contractors. In making his determination, the following factors will be considered:

1. has available the appropriate financial, material, equipment, and personnel resources and expertise, or the ability to obtain them, necessary to indicate the capability to meet all contractual requirements;

2. has a satisfactory record of performance on previous state contracts and with other persons;

3. is qualified legally to contract with the state of Louisiana (Prior to award of any contract, the successful bidder shall affirm by affidavit that he or she and/or the principal officers of a corporation are not currently under any felony conviction.); and

4. has reasonably supplied any information requested by the Commissioner of Elections in establishing responsibility.

B. Each bidder who is determined to be non-responsible shall be notified in writing. Such notification shall state all reasons for disqualification, and give each bidder who is proposed to be disqualified, a reasonable opportunity to refute the reasons for disqualification at an informal hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1601.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:596 (June 1991), amended LR 24:1923 (October 1998).

§117. Correction of Withdrawal of Bids

A. Obvious errors or errors supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders and such actions may be taken only to the extent permitted under regulations.

1. Any bid may be withdrawn prior to bid opening.

2. Minor informalities or insignificant mistakes may be waived or corrected if such will not prejudice other bidders (i.e. the effect on price, quantity, quality, delivery, or contractual conditions is not significant). The Commissioner of Elections may waive any informalities or allow corrections by bidders if it is in the best interest of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1594(F) and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:596 (June 1991).

§119. Bid Guaranty and Bond

A. If specified in the invitation for bids, a bond, certified check, or money order payable to the Department of Elections and Registration in the amount of five percent of the bid must accompany each bid submitted.

B. If a bidder withdraws his bid after bid opening, without complying with LAC 31:III.117, or fails to execute a contract within 20 days of request, the bid bond or other security shall be forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371 and LAC 34:I.523.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:596 (June 1991), amended LR 24:1923 (October 1998).

§121. Performance Bond

A. If specified in the invitation for bids, the bidder awarded the contract must submit a performance bond or letter of credit in the penal sum of one and one-half times the contract price made payable to the Department of Elections and Registration.

B. The performance bond shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*.

C. If a contractor fails to perform in accordance with contractual obligations, the contractor forfeits the performance bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2219, R.S. 39:1581, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:596 (June 1991).

§123. Forfeiture of Bonds

A. Actions by bidders causing forfeiture of bonds as stated in §119 and §121 above shall be cause for removing said bidders from the department's bid list and will support a determination of nonresponsibility for the bidder and its principals for a period of three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:596 (June 1991).

§125. General Guaranty

A. Contractor agrees:

1. to maintain all insurance required in the invitation for bids during the term of the contract;

2. to pay all taxes, permits, licenses and fees; to give all notices and comply with all laws, ordinances, rules and regulations of each city and/or town in the parish in which the contractor is performing his duties, and of the state of Louisiana;

3. to protect the state from loss in case of an accident or mishandling by contractor's employees; and

4. to make available the equipment, labor, insurance, etc. for drayage of voting machines at times other than for elections. Such prices to be determined by competitive bidding in accordance with small purchase provisions of the procurement code and subsequent applicable executive orders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:597 (June 1991).

§127. Award

A. All contracts shall be awarded to the lowest responsive and responsible bidder within 30 days of bid opening.

1. A responsive bidder means a person who has submitted a bid which conforms in all substantive respects to the invitation for bids, including the specifications set forth in the invitation.

2. The award shall be made by unconditional acceptance of a bid without alteration or correction, except as authorized in §117.

B. If a bidder who is the lowest responsive and responsible bidder declines to accept the contract, the award may be made to the next lowest bidder or the solicitation may be canceled and readvertised if it is determined that resolicitation is in the best interest of the state. Any bidder who has declined to accept the contract previously offered shall be ineligible to bid on the subsequent solicitation. A bidder who declines a contract or fails to produce an acceptable performance bond may also be debarred from future bidding.

C. In the case of "Tie Bids", award shall be made in a manner that will discourage future "Tie Bids". A written justification for the determination of award must be made by the Commissioner of Elections.

D. In-state bidders shall be preferred to out-of-state bidders on a reciprocal basis when there is a tie bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1594, R.S. 39:1595(I), and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:597 (June 1991).

§129. Rejection of Bids; Cancellation of Solicitations

A. The Commissioner of Elections reserves the right to reject any and all bids when it is in the best interest of the state of Louisiana.

1. Reasons for rejecting a bid include, but are not limited to:

- a. a determination of nonresponsibility has been made against a bidder;
- b. the bid is not responsive (i.e., it did not meet specifications or comply with terms and conditions).

2. Reasons for canceling a solicitation include, but are not limited to:

- a. the department no longer requires the service;
- b. bids received exceeded budgeted funds or were unreasonable;
- c. the solicitation was flawed (i.e., specifications were not complete or were ambiguous);

d. there is reason to believe that the bids received may have been collusive;

e. there is inadequate competition indicated by low response to the solicitation.

B. When bids are rejected, or a solicitation is canceled, written notices shall be given to the bidders, giving the reasons for the rejection or cancellation.

C. When a solicitation is canceled, where appropriate, bidders will be given the opportunity to bid on the new solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581, R.S. 39:1599, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:597 (June 1991), amended LR 24:1923 (October 1998).

§131. Emergency Procurements

A. The Commissioner of Elections or his designee may declare that an emergency situation exists when:

1. property is subject to loss or destruction as a result of an accident or natural disaster within 10 days of an election;

2. the functioning of the department will be threatened;

3. the health and safety of any person is threatened.

B. Every effort shall be made to obtain bids from three or more bidders. Bids shall be solicited from bonded, insured draymen or lessors currently under contract with the department.

1. If time permits, written quotations shall be solicited.

2. If time does not permit, telephone quotations shall be solicited.

C. The Commissioner of Elections shall make a written determination stating the basis for the declaration of an emergency, the procedure used prior to selecting a contractor, and the basis for awarding to a particular contractor.

D. The Commissioner of Elections shall keep all records relating to emergency procurements at least six years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1598 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:597 (June 1991).

§133. Collusive Bidding or Negotiations

A. The attorney general shall be notified in writing whenever collusion is suspected among bidders. Such notice shall contain all known facts.

B. All documents involved in a procurement in which collusion is suspected shall be retained for six years or until the attorney general notifies the department that they may be

destroyed, whichever is longer. These documents shall be made available to the attorney general or his designee upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1626 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:597 (June 1991).

§135. Specifications

A. All specifications shall be written so as to promote as much competition as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:598 (June 1991), amended LR 24:1924 (October 1998).

§141. Drayage Specifications

A. A contract cannot be transferred, subcontracted, or assigned prior to execution of said contract. After execution of the contract, a contractor may assign or subcontract his obligations under the contract only with the written consent of the Commissioner of Elections, which consent shall not be unreasonably withheld.

B. To the extent that a prospective contractor proposes to utilize subcontractors in performing the contract, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system determined by the Commissioner of Elections. All subcontractors must meet the same standards for responsibility, bonds, and insurance as the prime contractor.

C. If a bidder is the lowest responsible and responsive bidder in more than one parish, bidders will be limited to contracting for parishes with an aggregate total of not more than 1,000 voting machines or four parishes. In the event that those numbers are exceeded, the contracts will be awarded in the order in which bids were taken.

D. The term of the contract shall be one year with an option to renew for two additional one-year terms.

E. If the holder of multiple drayage contracts fails to perform in accordance with the provisions of any of his contracts, the Commissioner of Elections may cancel any and all contracts with that contractor. In addition, the contractor may be suspended from future bidding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:1371, R.S. 39:1581, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:598 (June 1991).

§143. Right to Protest

A. All proceedings herewith shall be carried out in accordance with the Conduct of Hearing Rules set forth in LAC 34:I.Chapter 31.

B. Any bidder may protest a solicitation or an award of a contract to the Commissioner of Elections.

C. In regard to the solicitation of a drayage contract, the protest must be made in writing at least two days prior to the opening of bids.

D. In regard to the award of any contract, a written protest must be made within 14 days after the contract is awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1671 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:598 (June 1991), amended LR 24:1924 (October 1998).

§145. Legal and Contractual Remedies

A. The Commissioner of Elections or his designee is authorized to settle and resolve any protest prior to court action. If a protest is not resolved by mutual agreement, the Commissioner of Elections or his designee shall, within 14 days, issue a decision in writing. The decision shall:

1. state the reasons for the action taken; and
2. inform the protestant of its right to administrative and judicial review as provided in Part VI of the Procurement Code.

B. Notice of decision shall be furnished immediately to the protestant and any other party intervening.

C. The decision of the Commissioner of Elections or his designee shall be final unless:

1. the decision is fraudulent; or
2. the person has appealed to the Commissioner of Administration in accordance with R.S. 39:1683 and R.S. 39:1685.

D. If a protest is lodged as provided for in these regulations, the department shall not proceed with the solicitation or award, unless the Commissioner of Elections declares in writing that proceeding is necessary to protect the substantial interest of the state. Upon such determination, no court shall enjoin progress under award except after notice and hearing.

E. When a protest is sustained and the protesting bidder should have been awarded the contract but is not, the bidder shall be reimbursed for reasonable costs associated with the solicitation, including bid preparation costs other than attorney's fees. Any administrative determination of such costs shall require approval of the attorney general.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1671, R.S. 39:1673, and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Commissioner of Elections, LR 17:598 (June 1991).

§147. Suspension and Debarment

A. A bidder and its principal officers and agents may be debarred or suspended from consideration for award of contracts during an investigation for probable cause if it is in the best interests of the state.

B. The Commissioner of Elections may suspend or debar a person for cause after notice to the bidder has been given, and the bidder has had a reasonable opportunity to respond. A

bidder may be suspended if the Commissioner of Elections determines that there is probable cause to believe that the bidder has engaged in any activity to lead to debarment.

1. The period of time for the suspension of a drayage contract shall be one complete cycle of bidding in all parishes.

2. The period of time for debarment of a drayage contract shall be two complete cycles of bidding in all parishes.

C. 1. Causes for debarment shall be in accordance with R.S. 39:1672(C).

2. In addition to the provisions of R.S. 39:1672(C), the Commissioner of Elections may debar a bidder for the following reasons:

a. the bidder has withdrawn a bid after an award, for whatever reason, more than once;

b. the Commissioner of Elections may declare other specific reasons for suspension or debarment which is in the best interests of the state.

D. The Commissioner of Elections shall notify the debarred or suspended bidder in writing of the decision stating the reasons for the action taken. Such notification shall also inform the debarred or suspended bidder's rights to administrative and judicial review.

E. The decision of the Commissioner of Elections or his designee shall be final unless:

1. the decision is fraudulent; or

2. the person has appealed to the Commissioner of Administration in accordance with R.S. 39:1684.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1672 and R.S. 36:662.

HISTORICAL NOTE: Promulgated by the Department of Elections and Registration, Office of the Commissioner, LR 17:599 (June 1991), amended LR 24:1924 (October 1998).